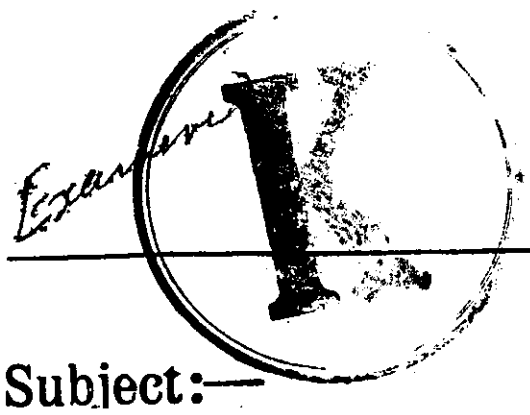
1945 File No: S. Dwr. 1/45



Legal – DEPARTMENT

A – BRANCH

Subject:—

Civil Suit No. 95 of 1944

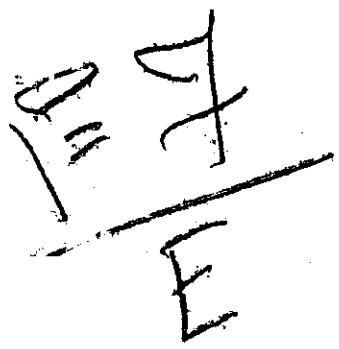
Gurunathappa Sunwarappa Hebballi – Plff.

V/s.

The Govt. of the Province of Bombay – Deft.

Claim – Rs. 5.

———X———



File No. S. Dwr. 1/45

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Dharwar Civil Suit No 95 of 1944

This suit is for a declaration that the acquisition of the suit land belonging to the plaintiff under the Land Acquisition Act is invalid and for an injunction restraining Government from taking possession of the same. The Hubli Municipality required the suit land for the purpose of providing space for a Tonga stand. In the notification issued under section 4 of the Land Acquisition Act the public purpose for which the land was likely to be required was stated to be road widening. In his objections taken under section 5A of the Act the plaintiff contended that the acquisition was illegal because the width of the road at that place was sufficient and that the Municipality intended to use the acquired land for a Tonga stand. These objections were overruled by the Special Land Acquisition Officer and in the second notification under section 6 it was stated that the suit land was required for the purpose of a Tonga stand although the major purpose was road widening. In this suit the plaintiff has raised similar objections. It is not open to him to contend that the public purpose does not exist because under section 6(3) of the Land Acquisition Act the declaration that the land is required for a public purpose is conclusive evidence of the existence of such purpose. Besides, the space for Tonga stand can only be provided by widening the existing road at the particular place and therefore the main purpose of widening the road would natrually include the minor purpose of making provision for a Tonga stand.

The suit is defensible and sanction may therefore be accorded to the defence on the lines of the accompanying brief. The draft written statement submitted by the D.G.P. Dharwar with his report under rule 118, as slightly amended, is in order and may be approved.

RLA

Secy/R.D.

L. G.
11. OCT. 1944

Suits :

Dharwar.

For a declaration that the acquisition of the suit land is invalid and for an injunction.

GOVERNMENT OF BOMBAY.

LEGAL DEPARTMENT.

Resolution No. 7242-A.

Bombay Castle, 20th October 1944.

Letter from the Collector of Dharwar, No. L.A.W. 450, dated the 17th August 1944—

IN THE COURT OF THE FIRST CLASS SUBORDINATE JUDGE AT DHARWAR.

Civil Suit No. 95 of 1944.

Gurunathappa Ishwarappa Hebballi .. Plaintiff ;

versus

The Government of the Province of Bombay .. Defendant.

Claim—Rs. 5.

Forwarding papers in the suit noted in the margin ; and requesting sanction to its defence.

Endorsement by the Commissioner, Southern Division, No. L.S.T./318, dated the 25th August 1944—Forwarding the above with his concurrence.

Memorandum to the District Government Pleader, Dharwar, No. 7242, dated the 20th October 1944—Forwarding a copy of the brief with its accompaniments in advance.

RESOLUTION.—Sanction is accorded to the defence of the suit on the lines of the accompanying brief.

By order of the Governor of Bombay,

Original

P. N. MOOS,

Secretary to Government.

G. R. No. 7242-A, L. D., dated the 20th October 1944.

To

Issued C&P 21/11/45

*The Revenue Department,
*The Commissioner, Southern Division,
*The Collector of Dharwar,
The District Government Pleader, Dharwar (with two copies of the brief).

*With a copy of the brief.

No. of 1944.

Copy forwarded for information and guidance to

Submitted after issue

File in a new suit file

HPJ 3-1-45 P.A. to Dy

Dy 4/1/45

27.3.5

Chronological Statement of Facts.

The suit is for a declaration that the acquisition of Hubli City Survey No. 407, Ward No. II, belonging to the plaintiff is illegal and *ultra vires* and for a permanent injunction restraining the defendant (Province of Bombay) from taking possession of the same.

2. Hubli C. T. Survey No. 407 admeasuring 10 square yards was notified under section 4 of the Land Acquisition Act, as likely to be needed for a public purpose, viz., road-widening. (See *Bombay Government Gazette*, Part I, dated 31st July 1941, pages 2604-2605.)

3. On 28th August 1941, the District Deputy Collector, I Division, Dharwar, issued a notice under section 4 (*1*) of the Land Acquisition Act to be served on the plaintiff. In this notice the public purpose was stated to be "widening of the road". However, in the municipal plan, it was shown that the land proposed to be acquired was required for a Tonga Stand near the City Police Station. The notice was served on the plaintiff on 12th September 1941.

File p. 3.

4. On 19th September 1941, the plaintiff submitted to the District Deputy Collector his objections to the proposed acquisition of the suit land. His principal objections were that the acquisition was unnecessary, because the existing road was sufficiently wide on both sides and that the public purpose stated in the notice was not true since the municipal map showed that the land was required not for widening the road but for a Tonga Stand. Plaintiff further contended that the land was unsuitable for a Tonga Stand.

File p. 6.

File p. 7.

5. On 15th April 1942, the Special Land Acquisition Officer, Hubli, heard the plaintiff's objections on the proposed acquisition. On 4th May 1942, he reported to the Collector of Dharwar that he had overruled all the objections of the plaintiff.

6. By Government Notification, Revenue Department, No. 2998/39, dated 21st September 1942, the suit land was declared under section 6 of the Land Acquisition Act to be required for public purposes mentioned in the previous Notification under section 4. (See *Bombay Government Gazette*, Part I, dated 24th September 1942, page 3396.) In the notification the suit land was stated to be required for a Tonga Stand.

File p. 12 (reverse).

7. On 29th November 1943, the Special Land Acquisition Officer declared an award under section 11 of the Land Acquisition Act and the plaintiff was directed to hand over possession of the property on 2nd February 1944.

8. On 1st February 1944, the plaintiff gave a notice of the suit under section 80 of the Civil Procedure Code.

File pp. 10 and 17.

9. Plaintiff thereafter applied first to the Collector and subsequently to the Commissioner to instruct the Land Acquisition Officer to refrain from taking possession of the property till the expiration of the period of notice. His application was, however, rejected. On 11th March 1944, the Land Acquisition Officer reported that possession of the property had been taken.

10. On 4th April 1944, the plaintiff filed the present suit in the Court of the First Class Subordinate Judge, Dharwar.

Grounds of Defence.

The plaintiff alleges that there is no necessity to widen the road in front of his shop since it is already 60 feet wide at that place. He thus contends that the alleged public purpose for which the land is acquired does not exist and the acquisition is therefore *ultra vires*. In reply, it should be pointed out that the contention whether a public purpose exists or not is not open to the plaintiff. Section 6 (*3*) of the Land Acquisition Act provides that the declaration published under section 6 (*1*) of the Act is conclusive evidence that the land is needed for a public purpose and such declaration cannot be questioned in a Court of law. The Act postulates a public purpose of which the Government alone

is the Judge. All that is necessary is that the lands which it is intended to acquire for a public purpose should be notified first under section 4 and then under section 6 of the Act. When that has been done the requirements of the Act are satisfied and the Court is debarred from inquiring into the question whether the purpose for which the land in respect of which the declaration is made is a public purpose or not. It is not open to the Court to go behind the declaration and say that it is not a public purpose. (Secretary of State *v.* Akbar Ali I.L.R. 45 All. 443; Veeraraghavcharear *v.* Secretary of State I.L.R. 49 Mad. 237; Parshotam *v.* Secretary of State 39 Bom.L.R. 1257.) The attention of the District Government Pleader is more particularly invited to the observations of Mr. Justice Devadoss in Veeraraghavchariar *v.* Secretary of State at page 245-246 of the report. The plaintiff might possibly rely on the rulings in Trustees of the Improvement of Calcutta *v.* Chandra Kanta Ghosh I.L.R. 47 Cal. 500 P.C. and Municipal Corporation of Bombay *v.* Ranchordas 27 Bom.L.R. 1130 in support of his case that the Court can go into evidence and adjudicate upon the question whether it was a public purpose or not. Neither of these cases has any bearing on this point. The first case which turned upon the construction of certain sections of the Calcutta Improvement Act was referred to and distinguished in Secretary of State *v* Akbar Ali cited above. In the second case from Bombay, the principle that the declaration under section 6 (*3*) was conclusive evidence of the existence of the public purpose was accepted but it was further held that it did not affect the right of the claimant to file a suit for a declaration that the scheme as sanctioned was *ultra vires* of the Municipality. It was decided that if the Municipality had no power under the City of Bombay Municipal Act to acquire the land the acquisition could be challenged in the Court of law on the ground that it was *ultra vires*. It will be seen thus that these cases do not touch the point in the present case.

2. The plaintiff's next contention is that whereas in notification and notice issued under section 4 the land was stated to be required for the purpose of widening the road, the Municipality has intended to use the road for a Tonga Stand and the acquisition is therefore illegal. This argument is also not tenable. In the first place, it is perfectly clear that the Hubli Municipality has the power under the Bombay Municipal Boroughs Act, 1925, to acquire the land for purpose of a "Tonga Stand". Under section 71 (*r*) of that Act, the Municipality may, at its discretion, provide either wholly or partly out of the Municipal property and fund for any measure not specified in section 68 likely to promote the public safety, health, convenience or education. Section 114 (*1*) empowers the Municipality to widen a public street and sub-section (*2*) provides for the acquiring of land for that purpose. Now in the notifications published under section 4 and 6, the land has been notified as being required for the major purpose of road-widening. In the latter notification, however, it is also shown that the suit land is required for a specific minor purpose of a "Tonga Stand". The provision for a Tonga Stand is clearly a public purpose likely to promote public convenience and if the space for a Tonga Stand can only be provided for by widening the existing road, the main purpose of widening the road would naturally include the minor purpose of using the extra width of the road for a Tonga Stand. Besides, a local authority may use a land acquired for one purpose for any other purpose within their statutory authority. (*See* Anderson's Manual of Land Acquisition, page 142, paragraph 325; *See* also Parshotam *v.* Secretary of State 39 Bom.L.R. 1257.) Moreover, even though the purpose of the Tonga Stand was not mentioned in the first notification, the plaintiff had an opportunity of raising his objection on this ground under section 5-A of the Land Acquisition Act before the Special Land Acquisition Officer who had overruled it after giving due consideration to the same. The procedure prescribed has, therefore, been properly followed and there has been no illegality in the acquisition of this land.

3. It should, therefore, be urged that the suit fails and must be dismissed with costs.

335

In the Court of the First Class Sub-Judge,

Hubli at Hubli.

L.C.Suit No.257 of 1944.

1. Gurappa Ishwarappa Hebballi, 50, trade Brahmin of Hubli.
.... Plff.

Vs.

1. The Covernment of the Province of Bombay..... Deft.

Claim Rs.65/-

J U D G M E N T.

The plft is the owner of C.T.S.No.407 in the town of Hubli and he has instituted this suit for a d claration that the notifications under the Land Acquisition Act issued by Government at the request of the Municipality are ultra vires and illegal and for an injunction restraining the Government of Bombay from going on with the acquisition proceedings.

2. The relevant paragraphs of the plaint are extracted below:-

(a) "The deft issued a notice under section 4(1) of the Land Acquisition Act (1 of 1894) to the effect that the suit property is going to be acquired for the purposes of widening the Muncipal road and that the same is published at page No.2605 of the Bombay Gazette dated 31-7-1941. Thus the "public purpose " as required by section 4 of the Land Acquisition Act is the widening of the - Muncipal road.

(b) "The road infront of the suit property is 60 ft wide and there is no necessity, to widen the road both at present and at the time of the declaration of the intended acquisition. The Hubli Muncipal Borough for whom the acquisition is being made had never thought of widening the road infront of the suit property and it appears that wrong information is supplied to the deft. From the very beginning the Muncipal Borough has reserved the site of the suit property for the purpose of making a "Tonga Stand". This plff objected to the intended ~~xxxxx~~ acquisition on this ground in answer to the notice referred to in para 1 above, but no proper inquiry was made.

(c) "The acquisition proceedings of the suit property are almost complete and the award is also declared by the Special Land Acquisition Officer Hubli. Plff served the deft with a notice under section 30 of the Civil Procedure Code on ~~12xx1944~~ 1-2-1944 to which the Collector of Dharwar has replied that it is accepted. When the Special Land Acquisition Officer, Hubli, who is exercising the - powers of the Collector regarding acquisition proceeded to take possession of the suit property, plff applied to the Collector, Dharwar, to stay the taking of possession till a suit was filed and stay order was obtained from the civil court. But he has not - intimated anything to the plff regarding the application. On the other hand plff is threatened with a notice from the Special Land Acquisition Officer, Hubli, any action under section 47 of the Land Acquisition Act should not be ~~xxxxxxx~~ resorted to for taking - possession.

(d) For the reasons stated in para 2 above there is no existence in fact of the "Public Purpose" as mentioned in the notice under section 4 of the Land Acquisition Act and consequently the acquisition of the suit property is illegal and ultra vires the powers of the deft. Therefore, the suit is filed for a declaration that the acquisition of the suit property is illegal and for a permanent injunction restraining the deft from taking possession of the suit property.

3. The Covernment of Bombay have filed the following written statement:

(c) "The deft submits that the property in suit was needed for public purpose by the Hubli Muncipality for widening the existing road near the City Police Station, Hubli City, where the traffic is heavy

is heavy, for the purpose of providing road space for a 'Tonga' stand for the safety and convenience of the public. The said property was, therefore, notified under section 4 of the Land Acquisition Act, I of 1895.

(b) "Subsequently the plff objected to the acquisition of the suit property on the ground that the purpose of reserving it for Tonga Stand was not a public purpose and the existing road being already sufficiently wide, and it was not necessary further to widen it. The plff's objections were overruled after due inquiry and the notification under section 6 of the Land Acquisition Act, was issued declaring that the property in suit was needed for general public purpose of widening the road and the particular public purpose of reserving a space for 'Tonga Stand'. The allegations in para 3 of the plaint that the Hubli Muncipality never thought of widening the existing road and that no proper inquiry was made regarding plff's objections and denied.

(c) "The deft submits that the declaration made by deft under the provisions of section 6 of the Land Acquisition Act, that the property in suit was needed for the public purposes of widening the road in general and reserving space for Tonga stand in particular is conclusive and the civil court is debarred from inquiring into the question whether the purpose for which the land is required is a public purpose or not.

(d) "The deft further submits that the Hubli Muncipal Borough is vested by the Muncipal Boroughs Act, 18 of 1925, with powers to acquire land through the Government agency for the purpose of promoting public safety and convenience and that the widening of the street and providing space for 'Tonga stand' constitute a public purpose".

(e) "The deft submits that the acquisition of the property is for a public purpose and the allegations to the contrary in para 4 of plaint are denied.

(f) "The property in suit having been acquired by the deft under the Land Acquisition Act, the ownership of it has vested in the deft free from all encumbrances under section 16 of the Land Acquisition Act and the plff's title to the same and to his right to the possession thereof are extinct. The allegations in para 1 of the plaint are denied.

(g) "The notification under section 4 and 6 of the Land Acquisition Act, issued by the deft in respect of the suit property & the acquisition of the same are legal and valid and intra vires. The allegations in the plaint that they are ultra vires and illegal are denied".

4. The following preliminary issue was framed in the case:-

Whether the plaint discloses a cause of action against the defendents ?

5. My finding is in the negaxtive.

Reasons.

6. The only question which arises for consideration in this suit is whether it can be said that there is any legal flaw in the procedure which has been followed. The matter stands thus:- The acquisition of the land was for and on behalf of the Muncipality. The notofication issued under section 4 of the Land Acquisition Act was on the basis that the Muncipality required the land for 'road widening purposes'. A final notification was issued under section 6 on the basis that the Muncipality required the land for purposes of a 'Tonga stand'.

7. Mr.Bhandiwad for the plff submits that the notification issued under section 4 on the basis that the Muncipality required the land for 'road widening purposes' automatically ceased to have effect and as the original notification ceased to be effective it could not be made the basis of a final notification under section 6. He argued that there having been no notification under section 4 in respect of the land being required for a tonga stand, all the proceedings now being taken are ultra vires.

7A. I think the answer to these contentions is to be found in the relevant provisions of the Land Acquisition Act. Section 4 of the Land Acquisition Act (I of 1894) provides in the sub-S.1:

(1) "Whenever it appears to the Local Government that land in any locality is needed or is likely to be needed for any public purpose, a notification to that effect shall be published in the official Gazette and the Collector shall cause public notice of the substance of such notification to be given at convenient places in the said locality".

3. The second clause goes on to provide that after the publication of this notice Government officers may enter upon the lands for various purposes connected with the acquisition. Section 5A of the Act provides for the hearing and disposal of objections made by persons interested in any land which has been notified. Section 6 sub-section 1 is in the following terms:-

b (1) "Subject to the provisions of Part 7 of this Act, when the Local Government is satisfied after considering the report, if any, made under section 5A, sub-section 2, that any particular land is needed for a public purpose, or for a company, a declaration shall be made to that effect under the signature of a Secretary to such Government or some Officer duly authorised to certify its orders; provided that no such declarationx shall be made unless the compensation to be awarded for such property is to be paid by a company, or wholly or partly out of public revenues or some fund controlled or managed by a local authority".

9. In sub-section 3 of section 6, it is provided that the said declaration shall be conclusive evidence that the land is needed for a public purpose or for a company as the case may be: and after making such declaration, the Local Government may acquire the land in manner hereinafter appearing.

10. On these facts, I have no hesitation in holding that the notifications issued under section 4 and 6 of the Act complied with the formal requirements of those sections. What is required for a valid notification under section 4 Land Acquisition Act, is that it should have appeared to the Local Government that the land in question was needed or likely to be needed for a public purpose. Similarly what is required for a valid notification under section 6 is that a Local Government should have been satisfied that the land notified was needed for a public purpose. And as provided by sub-section (3) of section 6 the declaration which has been made by the Local Government on that occasion is conclusive evidence that the land in question was needed for a public purpose. The conditions laid down by the Land Acquisition Act are, therefore satisfied.

11. Furthermore, the public purpose apparently remains the same. The main object of the scheme was to relieve heavy traffic on the road and provide necessary relief by way of a Tonga stand abutting on the public road. The object is unchanged. What has changed is the method of carrying out the scheme. But this is only an incidental feature which does not affect the main object of the relief road. To my mind, this is really a dispute about words of no vital importance. As observed in A.I.R. 1938 Bombay 148 at page 152. "The Act nowhere postulates identity in the scheme by means of which the public object is to be carried out. All that is legally necessary is that the lands which it is intended to acquire for a public purpose should be notified first under section 4 and then under section 6 Land Acquisition Act. That has been done. I think there is no substance in the argument that a fresh notification under section 4 was necessary. The requirements of the Act are satisfied and it cannot be said that any of the notifications are illegal and ultra vires."

12. In any case, a Tonga stand is a part of a public road and is consistent with the notification that the land was required for road widening purposes.

13. In the result the suit is dismissed. Defts to get their costs.

21-12-1944. Sd/ A.C.Sequiera

F.C.Sub-Judge.

"True Copy"

9 11
37 9

Decree.

In the Court of the First Class Sub-Judge,

at Hubli.

L.C.Suit No.257 of 1944.

Plff:- Gurunathrao Ishwarao Hebballi, age about 50, occupation trade, caste Brahmin, residing at Hubli.

Vs.

Deft: The Government of the Province of Bombay.

In this the plff above named begs to state as under:

1. Description of the suit property:-

Shop in Saraf Katta situated in Hubli city bearing C.T.S. No.407 in Ward No.II. Plff is the owner of the property and he is in the possession of the same.

2. The deft issued a notice under section (1) of the Land Acquisition Act (1 of 1894) to the effect that the suit property is going to be acquired for the purpose of widening the Muncipal road and that the same is published at page 2605 of the Bombay Government Gazette dated 31-7-1941. Thus the public purpose as required by section 4 of the Land Acquisition Act is the widening of the Muncip road.

3. The road infront of the suit property is 60 ft wide and there is no necessity to widen the road both at present and at the time of the declaration of the intended acquisition. The Hubli Muncipal Borough for whom the acquisition is being made never thought of widening the road infront of the suit property and it appears that wrong information is supplied to the deft. From the very beginning the Hubli Muncipal Borough has reserved the site of the suit property for the purposes of making a "Tonga" stand. This plff objected to the intended acquisition on this ground in answer to the notice referred to in para 1 above, but no proper in uiry was made.

4. The acquisition proceedings of the suit property are almost complete and the award is also declared by the Spl. Land Acquisition Officer, Hubli. Plff served the deft with a notice unde section 80 of the Civil Procedure Code on 1-8-1944 to which the Collector of Dharwar has replied that it is accepted. When the Spl. Land Acquisition Officer, Hubli, who is exercising the powers of the Collector regarding acquisition, proceeded to take possession of the suit property plff applied to the Collector of Dharwar to stay the taking of possession till a suit was filed and stay order was obtained from the civil court. But he has not intimated anythin to the plff regarding the application. On the other hand plff is threatened with a notice from the Spl. Land Acquisition Officer, Hubli, by action under section 47 of the Land Acquisition Act shoul not be resorted to for taking possession.

5. For the reasons stated in para 2 above there is no existence in fact of the public purpose as mentioned in the notice under section 4 of the Land Acquisition Act and consequently the acquisition of the suit property is illegal and ultra vires the powers of the deft. Therefore, this suit is filed for a declaration that the acquisition of the suit property is illegal and for a permanent injunction restraining the deft from taking possession of the suit property.

6. Since this is a suit for a declaration and injunction no notice under section 80 C.P.C. is necessary but still a notice is given.

7. The cause of action for the suit accrued on 2-8-1944 when the deft started to take possession of the suit property.

8. This is a suit for a declaration followed by injunction as a consequential relief. Therefore the valuation of the suit for the purpose of court fees is Rs.65/-. The valuation for the purposes of pleader's fees and jurisdiction of the court is also

the same.

9. Since this is a suit against the Government this court has special jurisdiction to try this suit.

10. The plff prays for a decree,

1). That for the reasons mentioned in paras 1 to 5 above the acquisition of the suit property be declared illegal and ultra vires the powers of the deft and for a permanent injunction - restraining the defendent from taking possession of the suit - property.

ii). That the deft be ordered to pay the costs of the plff.

This suit coming on this day for final disposal before Mr.A.C.Sequiera, First Class Sub-Judge in the presence of Mr.V.N. Bhandiwad pleader for the plff and Mr.Salapur Pleader for the deft, it is hereby ordered and decreed as under:-

In the result the suit is dismissed. The defts to get their costs.

Bill of Costs.

Plff		Deft.	
Stamp for plaint.	5-0-0	Applications.	1-4-0
Vakalatnama	0-8-0		
Copying fees.	0-4-0	Pleader's fees.	15-0-0
Pleader's fees.	15-0-0		
Process fees.	2-0-0		16-4-0
Total Rs.	22-12-0		

Given under my hand and the seal of the court this 21st Da of December 1944.

Sd/ N.N.Mudgal.
Clerk.

Sd/ A.C.Sequiera.
F.C.Sub-Judge.
9-1-1945.

"True Copy"

S.R.Salapur
District Government Pleader.

Suits:

Dharwar.
For a declaration that the acquisition of the suit land is invalid and for an injunction.

GOVERNMENT OF BOMBAY:
Legal Department.
Resolution No. 2031
Bombay Castle, 14th March 1945.

Read Government Resolution, Legal Department, No.7242-A dated the 20th October 1944.

Letter from the District Government Pleader, Dharwar, No.33, dated the 19th January 1945, stating that the suit noted in the margin was decided by the First Class Sub-Judge, Hubli, on the 21st December 1944, when the following order was passed.

In the Court of the First Class Subordinate-Judge at Dharwar. Civil Suit No.95 of 1944. Gurunathappa Ishwarappa Hebballi...Plaintiff; versus The Government of the Province of Bombay. ... ...Defendant. Claim - Rs.5.	"In the result the suit is dismissed. Defendants to get their costs."

Letter from the District Government Pleader, Dharwar, No.132, dated the 24th February 1945, forwarding uncertified copies of the judgment and decree.

RESOLUTION.- The result of the suit is recorded.

By order of the Governor of Bombay,

Original for (P. N. Moos,
(Secretary to Government.

Issued 14/3.

To

The Revenue Department.
The Commissioner, Southern Division,
The Collector of Dharwar.

Submitted for approval and signature

V.B.B.

P.A. 13/3

A.S.

14 Submitted after issue
2 file in S Dur Yes

MNJ
1973

P.A
1973

S Dur. 1/45